

Office Action Summary

Application No.

10/522,833

Applicant(s)

ONODERA ET AL.

Examiner

Elizabeth M. Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 2,5-7,11-14,29-32,34-37 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,8-10,15-18,33 and 38-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/2/05;6/12/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

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1. Applicant's election with traverse of Group I, claims 1,3,4,8-10, 15-18, 33, 38-41 in the reply filed on 5/1/07 is acknowledged. The traversal is on the ground(s) that there would not be a burden on the examiner to examine both groups and that the searches would overlap. This is not found persuasive because the application is a 371 of a PCT application and therefore the rules regarding unity of invention are applied. A showing of a burden, overlapping search, etc., are not required under unity of invention rules. Since the special technical feature common to both groups is known in the art, restriction is proper.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites "the dimensional change" in line 2. There is no antecedent basis for this limitation. Further, it is not clear what is meant by the F-1 method.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Driggars, U.S. Patent No. 6,253,582. Driggars discloses a knitted fabric comprising yarns which are formed from air jet spun polyester. The fabric has a pilling resistance of greater than 3. See abstract. Driggars does not disclose the claimed UV shielding rate or visible ray transmittance. However, when the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02. With regard to the limitation that the fiber has less than 1% by weight of titanium dioxide, Driggars does not disclose that the fiber comprises any titanium dioxide and therefore the fiber of Driggars meets the limitation comprising less than 1% by weight.

6. Claims 3-4, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driggars, U.S. Patent No. 6,253,582 in view of Suzuki et al, U.S. Patent No. 5,331,032. Driggars discloses a pill-resistant fabric formed from air jet textured polyester yarns as set forth above. Driggars differs from the claimed invention because it does not teach that the polyester yarn comprises a hydrophilic compound which is graft polymerized onto the fiber. Suzuki teaches a polyester material which can be formed into fibers.

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Suzuki teaches that the fibers can be formed into hollow, side by side or multi-lobal fibers. See col. 6, lines 45 –57; col. 21, lines 32-67. The fibers have excellent antistatic, absorbency and soil releasing properties. The polyester fibers have excellent resistance to pilling. See col. 23, lines 41-44. The polyester fibers can have a post treatment applied to them to make the fibers hydrophilic by graft polymerizing a hydrophilic monomer onto the fibers. See col. 23, lines 45-56. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have graft polymerized a hydrophilic monomer onto the polyester fiber of Driggars as taught by Suzuki, motivated by the expectation that this would render the fibers hydrophilic.

7. Claims 8-10, 15-18, 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driggars in view of Suzuki as applied to claims above, and further in view of JP 08-144,152. With regard to claims 8—10, Driggars differs from the claimed invention because it does not teach using crimped fibers in the spun yarn, or using low shrinkage fibers. With regard to claims 15-18, 38-41, Driggars does not teach employing a combination of high and low shrinkage fibers and does not teach shaped fibers or hollow fibers. Suzuki teaches that polyester fibers having excellent pilling resistance, absorbency and soil releasing properties can be formed so that they have hollow, multi-lobal and/or side by side configurations. JP '152 teaches that in forming yarns for fabrics which have an opaque appearance and a cool and comfortable feeling, that spun yarn, staple yarns, yarns having irregular cross sections, yarns having both a high and low shrinkage fibers and crimped yarns can be employed. See paragraphs 0008, 0013, 0018. of the machine translation. JP '152 teaches that air textured

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polyester yarns can be used. See paragraph 0020. It would have been obvious to have employed crimped yarns, staple yarns, yarns having irregular cross sections and/or yarns having both a high and low shrinkage fibers to form the fabrics of Driggar, motivated by the expectation that this would improve the appearance and hand of the fabrics.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole
Primary Examiner
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